

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JENNIFER OUDERKIRK,

Plaintiff,

v.

3:21-CV-1048
(GTS/ML)

RESCUE MISSION ALLIANCE OF SYRACUSE,
d/b/a Thrifty Shopper; JESSICA ARNOLD, Store Manager;
TRINITY MONOHAN, Assistant Store Manager; and
TAMMY LARRY, Regional Manager,

Defendants.

APPEARANCES:

JENNIFER OUDERKIRK

Plaintiff, *Pro Se*
83 Van Kirk Road, Apt. 1
Newfield, New York 14867

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Jennifer Onderkirk (“Plaintiff”) against the Rescue Mission Alliance of Syracuse (d/b/a Thrifty Shopper) (“Rescue Mission”) and three of its employees (“Defendants”), is United States Magistrate Judge Miroslav Lovric’s Report-Recommendation recommending that Plaintiff’s Title VII claims be permitted to proceed against Defendant Rescue Mission, but that her ADA and 42 U.S.C. § 1983 claims against all Defendants be dismissed with leave to amend. (Dkt. No. 4.)

Plaintiff has not filed an Objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant

papers herein, including Magistrate Judge Lovric's thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation.¹ Magistrate Judge Lovric employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein. To those reasons, the Court adds only the following analysis.

An extra-liberal construction of the factual allegations of Plaintiff's Complaint suggests that, in addition to attempting to assert the five claims identified on page five of the Report-Recommendation, Plaintiff is also attempting to assert the following three claims against Defendant Rescue Mission Alliance of Syracuse (d/b/a Thrifty Shopper): (1) a Title VII gender-discrimination claim; (2) a Title VII religious-discrimination claim; and (3) a Title VII race-discrimination claim. (*Compare* Dkt. No. 1, at ¶¶ 6(A), 6(C), 8.3-8.5, 8.8-8.11, 8.15 [Plf.'s Compl., alleging that she was "not permitted to wear long dresses and/or skirts on Sundays in accordance with her religious beliefs"] *with* Dkt. No. 4, at 5 [Report-Recommendation].) However, although the Complaint alleges facts regarding alleged gender discrimination and alleged religious discrimination, it does not do so regarding alleged race discrimination. (*See generally* Dkt. No. 1.) As a result, the former two claims survive the Court's *sua sponte* review, while the latter claim does not.

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear-error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a clear-error review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

ACCORDINGLY, it is

ORDERED that Magistrate Judge Lovric's Report-Recommendation (Dkt. No. 4) is

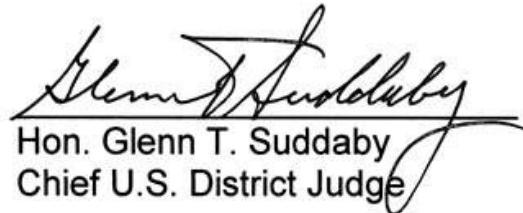
ACCEPTED and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's Title VII retaliation claim, Title VII gender-discrimination claim and Title VII religious-discrimination claim against Defendant Rescue Mission Alliance of Syracuse (d/b/a Thrifty Shopper) **SURVIVE** the Court's *sua sponte* review; and it is further

ORDERED that Plaintiff's ADA and 42 U.S.C. § 1983 claims against all Defendants and her Title VII race-discrimination claim against Defendant Rescue Mission Alliance of Syracuse (d/b/a Thrifty Shopper) are *sua sponte* **DISMISSED** without prejudice and with leave to amend within **THIRTY (30) DAYS** of the date of this Decision and Order;² and it is further

ORDERED that the Clerk of Court is directed to issue a Summons, along with a copy of the Complaint, to the U.S. Marshal for service upon Defendant Rescue Mission Alliance of Syracuse (d/b/a Thrifty Shopper), which is directed to respond in accordance with the Federal Rules of Civil Procedure.

Dated: December 13, 2021
Syracuse, New York



Hon. Glenn T. Suddaby
Chief U.S. District Judge

² The Court notes that, after the above-referenced thirty (30) day period, Plaintiff may amend this claim only during the pendency of this action and upon meeting the requirements of Fed. R. Civ. P. 15(a)(2) and Local Rule 15.1(a).